

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MONTANA

BILLINGS DIVISION

**FILED**

**AUG 06 2012**

**PATRICK E. DUFFY CLERK**  
BY \_\_\_\_\_

Deputy Clerk  
U.S. DISTRICT COURT  
BILLINGS DIVISION

**DWIGHT KROHNE and KITTY KROHNE, Individually, and DWIGHT KROHNE and KITTY KROHNE d/b/a "THE LAST STAND FIREWORKS COMPANY," "KROHNE ISLAND ANTIQUES," "CAFE-ED-ARTE," "LIVINGSTON GREYHOUND-RIMROCK TRAIL WAYS," and various rental properties.,**

**Plaintiffs,**

**v.**

**BURLINGTON NORTHERN & SANTA FE RAILWAY COMPANY, a foreign corporation, f/k/a BURLINGTON NORTHERN COMPANY, a Delaware Corporation,**

**Defendant.**

**CV-09-50-BLG-RFC**

**ORDER ADOPTING FINDINGS  
AND RECOMMENDATION OF  
UNITED STATES  
MAGISTRATE JUDGE**

On July 9, 2012, United States Magistrate Judge Carolyn Ostby entered Findings and Recommendation. Magistrate Judge Ostby recommends this Court Defendants' Motion to Dismiss be denied without prejudice to refile before the deadline for filing motions.

Upon service of a magistrate judge's findings and recommendation, a party has 14 days to file written objections. 28 U.S.C. § 636(b)(1). In this matter, no party filed objections to the July 9, 2012 Findings and Recommendation. Failure

to object to a magistrate judge's findings and recommendation waives all objections to the findings of fact. *Turner v. Duncan*, 158 F.3d 449, 455 (9th Cir. 1999). However, failure to object does not relieve this Court of its burden to review de novo the magistrate judge's conclusions of law. *Barilla v. Ervin*, 886 F.2d 1514, 1518 (9th Cir. 1989).

After an extensive review of the record and applicable law, this Court finds Magistrate Judge Ostby's Findings and Recommendation are well grounded in law and fact and adopts them in their entirety.

Accordingly, **IT IS HEREBY ORDERED** that Defendants' Motion to Dismiss [doc. 26] is DENIED without prejudice to refile before the deadline for filing motions.

The Clerk of Court shall notify the parties of the entry of this Order.

DATED the 6 day of August, 2012.

  
RICHARD F. CEBULL  
UNITED STATES DISTRICT JUDGE